

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Program Integrity
(Amendment)

907 KAR 1:005. Nonduplication of payments.

RELATES TO: KRS 205.624, 205.631~~205.520~~, 42 U.S.C. 1396a, 42 U.S.C. 1396k, 42 C.F.R. Parts 431, 433, 447

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.622

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid program. KRS 205.520(3) empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the Medicaid program policies relating to nonduplication of payment and treatment of third-party liability.

Section 1. Nonduplication of Payment. (1) In accordance with 42 C.F.R. 447.15, a payment to a provider for a service provided to a recipient shall be payment in full to the provider for the service~~[, except as provided in subsection (3) of this section].~~

(2)(a) A provider shall not seek payment from a recipient for a covered service provided to the recipient~~[, except as permitted pursuant to subsection (3) of this section].~~

(b) A recipient shall not be financially liable to a provider for a covered service provided by the provider to the recipient~~[, except as provided pursuant to subsection (3) of this section].~~

~~(3) A cost-sharing obligation that complies with 907 KAR 1:604 and 42 C.F.R. 447.50-447.90 shall not be a violation of this section.~~

Section 2. Third-party Liability. (1) The department shall comply with 42 C.F.R. Part 433, Subpart D, and consider any third-party liability as a resource.

(2) A recipient shall cooperate with the department for third-party liability purposes in accordance with 42 U.S.C. 1396k, 42 C.F.R. 433.138, and 42 C.F.R. 433.145.

(3) If payment for a covered service is due and payable from a third-party source such as Medicare, an insurance plan, or some other third-party with a legal obligation to pay, the amount payable by the cabinet shall be reduced by the amount of the third-party obligation.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 28, 2021

FILED WITH LRC: September 8, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by November 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 2021. Send written notification of intent to at-

tend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Medicaid program policies relating to nonduplication of payment and third party liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Medicaid program's nonduplication of payment and third party liability policies.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the Medicaid program's nonduplication of payment and third party liability policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing nonduplication of payment and third party liability policies in accordance with federal law.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment changes this administrative regulation by removing an exemption for cost-sharing as a nonduplication of payment. Cost sharing and copayments are now prohibited in the Medicaid Program after the passage of SB 55 during the 2021 Regular Session.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the regulation to comply with SB 55's prohibition of cost sharing.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms with the content of the authorizing statutes by complying with KRS 205.6312's prohibition of cost-sharing within the Medicaid program.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by instituting a clear policy regarding the use of copayments in the Medicaid program as required by SB 55 of the 2021 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation:

All Medicaid recipients who may be subject to cost sharing may be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied. The department estimates that up to 800,000 Medicaid members may be impacted by this administrative regulation.

By removing all co-pays, DMS also anticipates that 46,000 Medicaid providers will no longer experience reduced rates or administrative costs in pursuing payment for nominal co-pays.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Providers will be required to accept

department or recipient payment as payment in full. Recipients will need to ensure that no other entities have liability to pay before the department, which is the payor of last resort.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs are expected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries will be able to fully participate in the Medicaid program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(25), 42 U.S.C. 1396k, 42 C.F.R. 433.138,

2. State compliance standards. KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

KRS 205.520(4) states: "It is the intention of the General Assembly to comply with the provisions of Title XIX of the Social Security Act which require that the Kentucky Medical Assistance Program recover from third parties which have a legal liability to pay for care and services paid by the Kentucky Medical Assistance Program."

KRS 205.520(5) states: "The Kentucky Medical Assistance Program shall be the payor of last resort and its right to recover under KRS 205.622 to 205.630 shall be superior to any right of reimbursement, subrogation, or indemnity of any liable third party."

3. Minimum or uniform standards contained in the federal mandate. When another party has a legal obligation to support a Medicaid recipient or pay for the recipient's medical expenses, the Department for Medicaid Services must identify the responsible party and seek reimbursement for any Medicaid expenditures spent for services provided to the beneficiary.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not establish standards that are stricter than required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The amendments do not impose requirements that are stricter than federal

requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 205.520, 205.622, 205.624, 42 C.F.R. 433.138, 42 C.F.R. 431.625.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates no costs resulting from the amendment in the first year.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates no costs resulting from the amendment in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: